

\* \* \*

Defendant.

(Motion to Amend Judgment—#142)

“Calculation of time served in a federal sentence is governed by 18 U.S.C. §3585(b)” *United States v. Lualeмага*, 280 F.3d 1260, 1265 (9<sup>th</sup> Cir. 2002) (affirming denial of motion for credit for time served). In *United States v. Wilson*, 503 U.S. 329, 333 (1992), the Supreme court held that a district court lacks the authority to calculate credit for time served in the first instance. The initial calculations must be made by the Attorney General acting through the Bureau of Prisons.” *Id.* (citing *Wilson*, 503 U.S. at 335). A grant of credit in a district court judgment exceeds

1 the Court's authority, and would be stricken if imposed. *See United States v. Peters*, 4670 F.3d 907,  
2 909 (9<sup>th</sup> Cir. 2006) ("However, the district court's grant of credit for the time Peters had served in  
3 custody pursuant to his arrest exceeded its authority, and we strike from the judgment the phrase  
4 'with credit for time served from the defendant's arrest on August 9, 2006.'" (citations omitted).

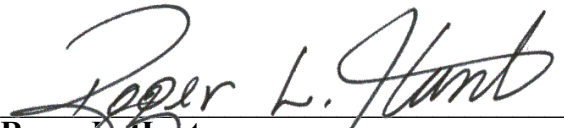
5 Even if this Court construed Defendant's motion as a petition for habeas corpus, it is  
6 foreclosed from granting the requested relief by statutory authority. *See United States v. Newman*,  
7 203 F.3d 700, 702 (9<sup>th</sup> Cir. 2000) (reversing district court's grant of credit for time spent in  
8 community treatment center).

9 The proper course for Defendant is through his administrative remedies with the  
10 Bureau of Prisons, rather than this motion.

11 IT IS THEREFORE ORDERED that

12 Defendant's Motion to Amend Judgment of conviction re: Time Served Credits  
13 (#142) is DENIED.

14 Dated: February 3, 2011.

15  
16   
17 **Roger L. Hunt**  
18 **Chief United States District Judge**  
19  
20  
21  
22  
23  
24  
25  
26